

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

UNITED STATES OF AMERICA,)
)
)
)
v.) Criminal No.: 1:09-cr-179
)
)
MIRWAIS MOHAMADI,)
 also known as "Omar," and "O,")
)
)
Defendant.)

ORDER

Before the Court is the Government's Motion to Strike Defendant's Notice of Insanity (Dkt. No. 51). Upon careful consideration of the motion, for the reasons stated below, and for good cause shown is it hereby

ORDERED that the Government's Motion to Strike Defendant's Notice of Insanity is GRANTED. Fed. R. Crim. P. 12.2(a) states as follows:

A defendant who intends to assert a defense of insanity at the time of the alleged offense must so notify an attorney for the government in writing within the time provided for filing a pretrial motion, or at any later time the court sets, and file a copy of the notice with the clerk. A defendant who fails to do so cannot rely on the insanity defense. The court may, for good cause, allow the defendant to file the notice late, grant additional trial-preparation time, or make other appropriate orders.

By its terms, Rule 12.2(a) contemplates that a defendant who fails to comply with the time requirements waives his right to raise an insanity defense. *United States v. Duggan*, 743 F.2d 59, 80 (2nd Cir. 1984) (internal citations omitted). According to the statute, a defendant who has not filed timely notice, however, can make a late filing and the district court may grant such permission "for cause." "Cause" consists not only of the explanation for the belatedness of the

party's action, but also of a showing of some merit in the position belatedly to be advanced." *Id.* See *United States v. Edwards*, 90 F.R.D. 391 (E.D. Va. 1981). In the current case, the deadline for the filing of pretrial motions was May 20, 2009. The trial was originally scheduled to begin on June 29, 2009. The defendant filed his Notice of Insanity on October 2, 2009 – 10 days before the rescheduled trial was to start. Defendant did not file any accompanying information with the Notice and did not make any statements at the hearing held on October 5, 2009 explaining either the reason for the late notice or showing any merit in its insanity assertion. Because Defendant has failed to show "good cause" for the late filing of its Notice of Insanity, the Government's motion is GRANTED.

IT IS SO ORDERED.

ENTERED this 9th day of October, 2009.

/s/ *NOJ*
Liam O'Grady
United States District Judge

Alexandria, Virginia